

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LEWIS COUNTY, WASHINGTON**

IN RE: APPROVING PERSONAL SERVICES
AGREEMENT BETWEEN LEWIS COUNTY AND
DULIN CONSTRUCTION, INC.

RESOLUTION NO. 98-498

WHEREAS, a Personal Services Agreement has been prepared between Lewis County and Dulin Construction, Inc. (Attached as Exhibit A); and,

WHEREAS, the Board of Lewis County Commissioners has had an opportunity to review the Personal Services Agreement; and,

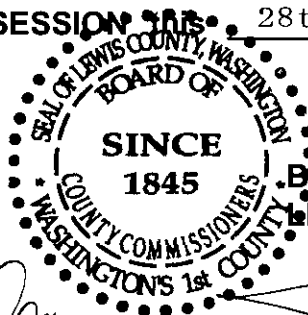
WHEREAS, it appears to be in the best public interest to authorize this Personal Services Agreement with Dulin Construction, Inc.; NOW THEREFORE

BE IT RESOLVED that this Personal Services Agreement between Lewis County and Dulin Construction, Inc. is hereby approved and the Chairman of the Board of County Commissioners is authorized to sign the Agreement on behalf of Lewis County.

DONE IN OPEN SESSION THIS 28th day of September, 1998.

ATTEST:


Clerk of the Board



BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON


Chairman


Member


Member

EXHIBIT A

PERSONAL SERVICES AGREEMENT

NO. _____

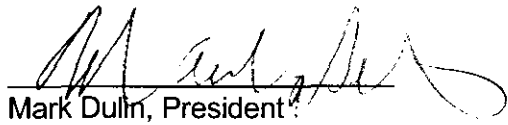
DULIN CONSTRUCTION, INC., hereinafter called CONTRACTOR, and LEWIS COUNTY, hereinafter called COUNTY agree as set forth in this Agreement, including: General Conditions, Exhibit A (Schedule of Compensation), Special Conditions and Scope of Work, copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

The term of this Agreement shall commence on the 1st day of October, 1998, and shall, unless terminated or renewed as provided elsewhere in the Agreement, terminate on the 31st day of October, 1998.

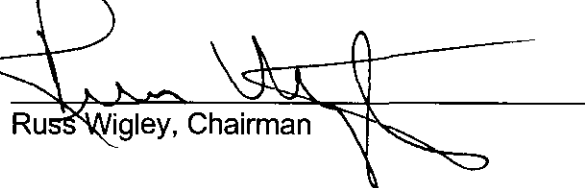
CONTRACTOR acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 5, 7, 13, 19 and 22, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 25th day of September, 1998.

CONTRACTOR:
DULIN CONSTRUCTION, INC.

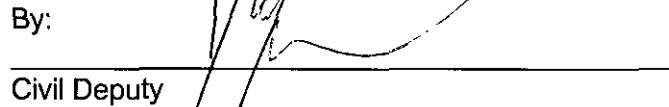

Mark Dulin, President

LEWIS COUNTY
BOARD OF COUNTY COMMISSIONERS


Russ Wigley, Chairman

Mailing Address:
DULIN CONSTRUCTION
PO Box 38
Centralia, WA 98531

Approved as to Form Only:
JEREMY RANDOLPH, Prosecuting Attorney

By: 
Civil Deputy

Business Tax ID # 91-0828670

GENERAL CONDITIONS

1. Scope of CONTRACTOR's Services: The CONTRACTOR agrees to provide to the County the services of DULIN CONSTRUCTION, INC. in accordance with the attached Scope of Work.
2. Accounting and Payment for CONTRACTOR Services: The CONTRACTOR shall be paid for performance under this contract as per attached Exhibit A.
3. Assignment and Subcontracting: No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the Contracting Officer.
4. Labor Standards and Contract Assistance: The CONTRACTOR shall comply with the provisions of the Lewis County Contract and Procurement Assistance Program, attached hereto as Special Conditions.
5. Independent CONTRACTOR: The CONTRACTOR's services shall be furnished by the CONTRACTOR as an independent CONTRACTOR and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the CONTRACTOR as an independent CONTRACTOR.

The CONTRACTOR acknowledges that the entire compensation for this Agreement is specified in Exhibit "A" and the CONTRACTOR is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Lewis County employees.

CONTRACTOR will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

6. No Guarantee of Employment: The performance of all or part of this contract by the CONTRACTOR shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the CONTRACTOR or any employee of the CONTRACTOR or any SUB-CONTRACTOR or any employee of any SUB-CONTRACTOR by the County at the present time or in the future.
7. Taxes: The CONTRACTOR understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the CONTRACTOR authorizes the County to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the CONTRACTOR will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the CONTRACTOR to make the necessary estimated tax payments throughout the year, if any, and the CONTRACTOR is solely liable for any tax obligation arising from the CONTRACTOR's performance of this Agreement. The CONTRACTOR hereby agrees to indemnify the County against any demand to pay taxes arising from the CONTRACTOR's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The CONTRACTOR must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the CONTRACTOR's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

8. Regulations and Requirement: This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington.
9. Right to Review: This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County. Such review may occur with or without notice, and may include, but is not limited to, on site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. When necessary, CONTRACTOR shall have an affirmative duty of notify such service recipients of this right to review. The CONTRACTOR shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Lewis County, State of Washington, upon request.
10. Modifications: Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties, and effective on the latter date of execution by the respective parties.
11. Termination for Default: If the CONTRACTOR defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits an act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the CONTRACTOR in the U. S. mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the CONTRACTOR shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the CONTRACTOR. The CONTRACTOR shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

12. Termination or Suspension for Public Convenience: The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion, that such termination or suspension is in the interests of the County. Whenever the contract is terminated or suspended in accordance with this paragraph, the CONTRACTOR shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not

include provision for loss of anticipated profit on deleted or uncompleted work. Termination or suspension of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County. Lewis County may reactivate the contract in whole or in part following suspension upon depositing written notice of reactivation to CONTRACTOR in the U.S. mail, said reactivation becoming effective ten (10) days following mailing.

13. Defense & Indemnity Agreement: The COUNTY agrees to defend, indemnify and save harmless the CONTRACTOR, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the CONTRACTOR, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether arising from any state or federal legal challenge, claim of loss or illegality, or action brought against the CONTRACTOR, its SUB-CONTRACTORS, its successor or assigns, or its agent, servants, or employees, in contracting with the COUNTY to assist in the execution of any Order of the enforcement of any abatement or injunctive judgment, or any contempt action arising from such abatement or injunctive judgment. It is further provided that no liability shall attach to the CONTRACTOR by reason of entering into this contract, except as provided herein.

The CONTRACTOR agrees to defend, indemnify and save harmless the COUNTY, its appointed and elective officer and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the COUNTY, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof due to the negligence of the CONTRACTOR, his/her SUB-CONTRACTORS, its successor or assigns, or its or their agent, servants, or employees. It is further provided that no liability shall attach to COUNTY by reason of entering into this contract, except as provided herein.

14. Industrial Insurance Waiver: With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the CONTRACTOR expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the CONTRACTOR. This waiver is mutually negotiated by the parties to this agreement for valuable consideration.
15. Venue and Choice of Law: In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Lewis. This Agreement shall be governed by the law of the State of Washington. Except as otherwise stated herein, each party shall be responsible for its own attorneys fees.
16. Withholding Payment: In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Agreement and said failure has not been cured within the times set forth in this Agreement, then the County may, upon written notice,

withhold all moneys due and payable to CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated.

17. Future Non-Allocation of Funds: If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.
18. CONTRACTOR Commitments, Warranties and Representations: Any written Commitment received from the CONTRACTOR concerning this Agreement shall binding upon the CONTRACTOR, unless otherwise specifically provided herein with reference to this paragraph. Failure of the CONTRACTOR to fulfill such a commitment shall render the CONTRACTOR liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.
19. Patent/Copyright Infringement: CONTRACTOR will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the CONTRACTOR infringes any patent or copyright. The CONTRACTOR will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
 - a. That CONTRACTOR shall be notified promptly in writing by County of any notice of such claim.
 - b. CONTRACTOR shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.
20. Disputes:
 - a. General

Differences between the CONTRACTOR and the County, arising under and by virtue of the Contract Documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the County, shall be final and conclusive.
 - b. Notice of Potential Claims

The CONTRACTOR shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the County, or (2) the happening of any event or occurrence, unless the CONTRACTOR has given the County a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the CONTRACTOR believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as

possible, the amount of the potential claim. CONTRACTOR shall keep full and completed daily records of the Work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim

The CONTRACTOR shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the CONTRACTOR has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

21. Ownership of Items Produced: All writings, programs, data, public records or other materials prepared by the CONTRACTOR and/or its CONTRACTORS or SUB-CONTRACTORS, in connection with the performance of this Agreement shall be the sole and absolute property of the County.
22. Confidentiality: The CONTRACTOR, its employees, SUB-CONTRACTORS, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the CONTRACTOR in performance of this Agreement, except upon the prior written consent of the Lewis County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. CONTRACTOR shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. CONTRACTOR shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from CONTRACTOR's breach of this provision.
23. Notice: Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the CONTRACTOR to the County's designated representative. Notice to the CONTRACTOR for all purposes under this agreement shall be given to the address of record supplied by the CONTRACTOR. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.
24. Severability: If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.
25. Waiver: Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.
26. Survival: The provisions of paragraphs 6, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 26, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.
27. Entire Agreement and Interpretation: This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A

SCHEDULE OF COMPENSATION

The CONTRACTOR shall charge hourly rates for services tendered to Lewis County as follows:

	In/Out	Rate/Hr.	Overtime Rate/Hr.
200 Excavator	151.51	97.40	112.55
4yd. Wheel Loader	0	92.00	107.14
Solo Dump	0	67.10	82.25
Gd/Foreman	N/A	50.87	66.02

Such rates shall be deemed to include reimbursement for miscellaneous expenditures incurred by said personnel in the performance of their services. CONTRACTOR shall not be required to remove hazardous materials from the site. CONTRACTOR will mobilize and be available on-site, at the appointed hour, the next normal working day following the working day upon which notice of mobilization was received.

SPECIAL CONDITIONS

A. Definitions

The COUNTY is the recipient of CONTRACTOR's services, and at all times acts through its Board of County Commissioners. The Contact Officer or representative of the COUNTY will be the Board of County Commissioners, or their designee.

B. CONTRACTOR Registration

The CONTRACTOR agrees and covenants to furnish unto the COUNTY proper evidence that the CONTRACTOR has fully complied with the State Licensing Law.

CONTRACTOR shall include his CONTRACTOR's license number in the space provided in the "Conditions of Proposal".

C. Non-Discrimination (Lewis County Funds)

The CONTRACTOR should be aware that public funds are being used to assist in this project. During the performance of this contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the CONTRACTOR's commitments under Section 202 or Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in a conspicuous place available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of

Labor, or pursuant thereto, and will permit access to his books and records for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contract may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR will include the provisions of Paragraphs (1) through (7) in every sub-contract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each sub-contract or vendor. The CONTRACTOR will take such action with respect to any sub-contract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a SUB-CONTRACTOR or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

D. Original Specifications

It is hereby expressly agreed by and between the parties involved that in any matter, dispute, suit, or proceedings arising or in any way growing out of this contract in which it may be necessary to introduce into evidence the original of such specifications, that a printed copy thereof may be used in lieu thereof with like force and effect as though the original was produced.

E. Eight Hour Law and Payment for Labor

The CONTRACTOR agrees to comply with RCW 49.28.010.065 providing that no laborer, workman or mechanic in the employ of the CONTRACTOR, SUB-CONTRACTOR, or other person doing or contracting to do the whole or any part of the work contemplated by this contract, shall be permitted or required to work more than eight (8) hours in any one calendar day, provided that, in cases of extraordinary emergency, such danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight (8) hours of each calendar day shall not be less than one and one-half times the rate allowed for this same amount of time during eight (8) hours' service. Any work necessary to be performed after regular working hours, or Sunday or legal holidays shall be performed without additional expense to the COUNTY.

Notwithstanding the above provisions, a CONTRACTOR may enter into an agreement approved by the employees in which the employees may work up to ten (10) hours in a calendar day for not more than four (4) calendar days in a week.

CONTRACTOR further agrees that said contract is terminable in case the CONTRACTOR shall violate the provisions of such act.

The CONTRACTOR, and SUB-CONTRACTORS shall further verify that:

1. He had not employed or retained any company or person (other than a full time bona fide employee working solely for the offerer) to solicit or receive this contract; and
2. He has not paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offerer) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and
3. He has not been asked or otherwise coerced, whether expressed or implied, into contributing funds, for any purpose as a condition to doing business with the COUNTY.

It is further agreed that in case any dispute arises as to what are the prevailing wages for the work of a similar nature and such dispute cannot be adjusted by the parties involved, the matter shall be referred for arbitration to the Director of the Department of Labor & Industries of the State and his decision therein shall be final, binding, and conclusive on all parties.

SCOPE OF WORK

I. BACKGROUND

COUNTY is obligated to pursue enforcement of its ordinances for the health, safety and general welfare of its citizens through legal abatement proceedings and requests for injunctive relief, and through subsequent contempt proceedings. In performing such enforcement, the County require the personnel, equipment and expertise of the CONTRACTOR to remove solid waste materials from enforcement sites, in compliance with orders and judgments of the Court.

II. DETAILS OF SERVICES REQUESTED

- A. CONTRACTOR shall provide and COUNTY will receive personnel, equipment, and technical assistance in enforcing and executing orders and judgments of the Court on abatement, injunction and contempt proceedings, in return for CONTRACTORS expenses, to be offset by any salvage value of any materials removed from an enforcement site, and for hold harmless protections received from the COUNTY (and by and through the COUNTY's insurance coverage) for CONTRACTOR's participation in such enforcement action, as noted above.

III. COUNTY FUNCTIONS

- A. The Lewis County Department of Community Development Director, or his designee, will coordinate and supervise the CONTRACTOR's services, and facilitate protective measures at the site.
- B. COUNTY staff and documentation (not otherwise privileged) shall be made available to the CONTRACTOR during normal business hours, or as otherwise agreed to between the parties, to assist the CONTRACTOR in performance of its services.
- C. COUNTY will provide such technical services as may reasonably be required by the CONTRACTOR, excepting legal services which shall be provided only upon the express approval of the Lewis County Prosecutor, and provide for, as necessary, weighing of the materials removed.

IV. CONTRACTOR FUNCTIONS

- A. CONTRACTOR shall maintain equipment and a trained staff capable of rendering the services set forth in this document; and
- B. Provide a certificate of worker's compensation coverage for employees.